

CALIFORNIA ENERGY CO., INC.

IBLA 83-81, 83-90

Decided January 24, 1983

Consolidated appeals from decisions of the California and Oregon State Offices, Bureau of Land Management, denying protests against issuance of noncompetitive geothermal leases and/or notices of intention to award geothermal leases. CA 2125, etc.; CA 3000; OR 3202; and OR 12947, etc.

Affirmed.

1. Geothermal Resources -- State Laws

A corporate applicant for geothermal leases does not lose its priority as senior offeror because it has been temporarily suspended by its state of incorporation for failure to pay taxes, where the state has a policy that a suspended corporation may regain full status, without penalty, upon payment of its obligations.

2. Geothermal Resources

Where a corporation is organized under the laws of a state, geothermal leases may be issued to it.

APPEARANCES: Kenneth Nemzer, Esq., Santa Rosa, California, and L. Charles Johnson, Esq., Pocatello, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

California Energy Company, Inc. (California Energy), has appealed two decisions, one by the Oregon State Office (ORSO), Bureau of Land Management (BLM), dated September 21, 1982, and another by the California State Office (CASO), BLM, dated September 27, 1982. Both decisions dismissed protests by California Energy against the issuance of noncompetitive geothermal leases and/or notices of intention to award geothermal leases 1/ to Alaskan Geothermal, Inc. (Alaskan Geothermal). Since the appeals present the same issues, the Board has, sua sponte, consolidated them.

1/ The following parcels are affected by California Energy's protests: CA 2125 through CA 2129, CA 2134, CA 2136 through CA 2140, CA 2142, CA 2143,

Alaskan Geothermal evidently filed its applications between 1973 and 1976 with CASO and ORSO, BLM, at a time when it was known as California Geothermal, Inc. (California Geothermal). In March 1982 CASO wrote to the Secretary of State, State of California, to determine whether California Geothermal was a properly qualified corporation and in good standing in California. The Secretary of State responded that it was incorporated in California on July 9, 1973, but that it was suspended on September 1, 1978, "for not complying with statutory requirements." On March 4, 1982, California Energy, the present protestant, filed a statement from the California State Franchise Tax Board that California Geothermal (corporation No. 0684601) had been suspended effective September 1, 1978. A representative of the Secretary of State has explained to us that California Geothermal was probably suspended for failure to pay its taxes.

On March 29, 1982, CASO issued a decision holding that California Geothermal was not qualified to hold geothermal leases, since it was not in good standing in the State of California. CASO allowed it 30 days to demonstrate otherwise.

On April 21, 1982, California Geothermal advised BLM that it had changed its name to "Alaskan Geothermal, Inc.," and filed an amendment to its articles of incorporation so providing. It explained that, while its corporate status was suspended, another entity had taken the name "California Geothermal, Inc.," thus necessitating its adopting a new name. It further explained that it was still the same corporate entity, but was simply now called by a different name. Alaskan Geothermal also filed information from the California Secretary of State recognizing the change of name and stating that "California Geothermal, Inc., now: Alaskan Geothermal, Inc.," became incorporated on July 9, 1973, and that its "corporate powers, rights, and privileges [were] not suspended on the records of this office" as of April 21, 1982. Finally, Alaskan Geothermal filed a "certificate of relief from suspension of forfeiture" for Alaskan Geothermal, corporate No. 0684601 (the same number previously applied to California Geothermal), from the California State Franchise Tax Board, dated April 20, 1982, stating that Alaskan Geothermal had been "relieved of suspension or forfeiture and is now in good standing with the Franchise Tax Board."

On May 4, 1982, CASO requested that Alaskan Geothermal file new statements of corporate qualifications, and it complied on June 8, 1982. These qualifications show that Alaskan Geothermal is wholly owned by Canada Geothermal Oil, Ltd., a Canadian firm incorporated in Ontario and owned in majority interest by R. E. Wolf, a Canadian, who is president of Alaskan Geothermal.

On August 30, 1982, California Energy filed its protests in CASO and ORSO, BLM, noting that it had filed offers for many of the same lands as had Alaskan Geothermal, although the latter's were senior to its own. It argued

CA 2145 through CA 2147, CA 2150 through CA 2152, CA 2156, CA 2157, CA 2160, CA 2169, CA 3079 through CA 3081, and CA 3084 through CA 3086; OR 12947, OR 12951, OR 12954 through OR 12958, OR 12961, OR 12963 through OR 12967, OR 12972, OR 12977, OR 12994, OR 12995, OR 12997, and OR 13762 through OR 13766.

that Alaskan Geothermal had lost its priority, since it had been suspended from good standing in California for 3-1/2 years and was therefore a nullity during its suspension. It also argued that this violation was particularly significant because Alaskan Geothermal is a "vehicle of foreign interests." Since, under Departmental regulations, the only means of controlling foreign interests which seek geothermal leases through corporations created in the several states is through state corporation law, protestant argued, any failure to comply with the state laws must result in a loss of standing under the regulations.

On September 21, 1982, ORSO, BLM, issued its decision denying California Energy's protest, holding that California Geothermal's suspension did not affect its standing with the Federal Government, since there was never a dissolution of the corporation or any termination of its existence. It held that Alaskan Geothermal, a corporation organized under the laws of California, was authorized by 43 CFR 3202.1(c) to hold a geothermal lease. It also held that the fact that Alaskan Geothermal is controlled or owned by Canadians was immaterial, since, at the time of the original filing of the applications, Canada was on the list of countries entitled to reciprocal treatment. Since Canada did not deny similar privileges to United States citizens, ORSO held that it could not deny them to Alaskan Geothermal. On September 24, 1982, CASO issued a decision recognizing the change of the corporation's name to Alaskan Geothermal for 10 existing geothermal leases. ^{2/} On September 27, it dismissed California Energy's protest. These appeals followed.

[1] This appeal hinges on the status of Alaskan Geothermal, Inc., originally known as California Geothermal, Inc. This question is governed by California State law, under which authority the corporation exists.

There is no question that Alaskan Geothermal was a vital entity at all times up to September 1, 1978, including the time when it filed its applications for these geothermal leases. The filing of a valid noncompetitive geothermal lease offer gives the filer priority to the lease over all subsequent filers, since BLM may only issue a lease to the first-qualified offeror. 30 U.S.C. § 1003 (1976). The issue is whether Alaskan Geothermal lost this priority by reason of its suspension in 1978. We conclude that it did not.

In the case most closely in point, the California Supreme Court, sitting en banc, considered the effect of a temporary suspension of a corporation for failure to pay its taxes on its ability to prosecute and defend legal actions in the California courts. It held that the purpose of the statute suspending the corporation's privileges for tax delinquency is to put pressure on it to pay its taxes, and that there is little purpose in imposing additional penalties after the taxes have been paid. It concluded that, where a corporation was suspended at the time it filed its complaint, but had secured reinstatement before trial, it was revived, and its actions during the period of its suspension were validated. Peacock Hill Association v. Peacock Lagoon Construction Co., 105 Cal. Rptr. 29, 503 P.2d 285 (1972), citing Traub Co. v. Coffee Break Serv., Inc., 57 Cal. Rptr. 846, 425 P.2d

^{2/} The following were identified by CASO as existing leases: CA 2125 through CA 2130, CA 2134, CA 2135, CA 2137, and CA 2138. It is unclear from the present record when CASO issued these leases.

790 (1967), and cases cited therein. This was even though, as here, an adverse party had brought the suspension to the court's attention as part of a motion to dismiss prior to reinstatement.

This case, although not directly in point, is indicative of a policy in California that a suspended corporation may regain full status, without penalty, upon satisfaction of its statutory obligations. The reinstatement relates back and removes any break in the corporate existence. This policy is evident from the statement by the California Secretary of State certifying Alaskan Geothermal's status, in which the date of incorporation is stated as July 9, 1973, the original date of incorporation, rather than as the date of revival. Appellant has not directed us to any current California State authority to the contrary. We conclude that Alaskan Geothermal was a valid entity at all times and that it did not lose its priority on account of its temporary suspension for failure to pay taxes, since it has been fully reinstated.

[2] The fact that Alaskan Geothermal is wholly owned and controlled by Canadians does not adversely affect its applications. Its suspension under California law is not made more significant on account of its foreign ownership: nothing suggests that the above-noted California State policy of full reinstatement does not apply to corporations with foreign stockholders. Under section 16 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1015 (1976), and 43 CFR 3202.1, leases may be issued to any corporation organized under the laws of any state. Alaskan Geothermal is such a corporation. 3/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

3/ ORSO's reference to the list of countries entitled to reciprocal treatment was inapt, since reciprocity is only relevant to oil and gas leasing. Compare 43 CFR 3102.1(b) with 43 CFR 3202.1.

